UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

LITTLE LISA, INC. d/b/a
WAYNE CONCRETE, INC.

Employer

and **Case 3-RC-11727**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 17, AFL-CIO[1]

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

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[1] The Petitioner's name appears as amended at the hearing.

[2] Counsel for the Employer failed to serve a copy of his brief upon the Petitioner and failed to file a statement of service as is required by Section 102.67 of the Board's Rules and Regulations. The Petitioner has requested that the Employer's brief be stricken. I find that Petitioner has not been prejudiced by its failure to receive a timely copy of the brief because there is no provision under the Board's Rules and Regulations for the filing of a reply brief. See, Royal Development Company, Limited, 257 NLRB 1168, 1169 (1981).

In its post-hearing brief, Counsel for the Employer asserts that the Hearing Officer failed to allow the Employer an opportunity to present additional record testimony relating to plant transfers and the consequences of a unit smaller than the employer-wide unit sought by the Employer. I find that the Hearing Officer provided the Employer with sufficient opportunities to present relevant evidence.

2. The parties stipulated that Little Lisa, Inc. d/b/a Wayne Concrete, Inc., hereinafter referred to as the Employer, is a corporation with a place of business located in Springville, New York, where it is engaged in the operation of a ready-mix concrete plant. In the past 12 months, a representative period, the Employer, in conducting its business operations, has purchased and received goods and materials valued in excess of $50,000 at its Springville, New York plant, which were shipped directly from points located outside the State of New York. Based on the parties' stipulation and the record as a whole, I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the International Union of Operating Engineers, Local Union No. 17, AFL-CIO, hereinafter referred to as the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

At the hearing, the Petitioner amended its petition to include all full-time and regular part-time drivers employed by the Employer at its Springville, New York plant; excluding coordinators, office clerical employees, guards, professional employees and supervisors as defined in the Act.

The parties stipulated that the following named employees are full-time drivers, employed by the Employer at its Springville, New York plant, and should be included in any unit found appropriate herein: Raymond Baker; Dennis Cobo; Duane Fuller; James Gernatt; Timothy Ring; and Edward Ring, Jr.

At the hearing, the parties also stipulated that the following named individuals are ineligible to vote in the election: Lisa Stephen, president; William Haas, executive vice-president; and Cathy Derx, human resource coordinator.[3]

There are three issues presented herein: unit scope, the supervisory status of two individuals, and unit composition. The first issue involves whether the single-plant unit sought by the Petitioner is appropriate, or whether, as the Employer asserts, the only appropriate unit is one which includes all employees employed at all four of its plants.

The second issue involves the supervisory status of Mike Onisko and Brad Chaffee. The Petitioner seeks to exclude them from the petitioned-for unit as supervisors. Alternatively, the Petitioner asserts that if these two individuals are found not to be supervisors under Section 2(11) of the Act, then they should be excluded from the unit as they do not share a community of interest with the employees in the petitioned-for unit. The Employer argues that these two individuals should be included in the bargaining unit because they do not exercise any of the supervisory indicia listed in Section 2(11) of the Act. The Employer also asserts that these two individuals share a community of interest with the employees in the petitioned-for unit.

The final issue involves whether seven individuals, Thomas Ring, Robin Pirdy, Jerrod Kester, Terry Neudeck, Eric Pearson, Jeff Moyer and Jesse Blevin, should be included in the unit found appropriate herein. The Petitioner asserts that three of these individuals, Ring, Pirdy and Kester, should be included in the bargaining unit as they are either full-time or regular part-time drivers employed by the Employer at its Springville, New York plant. The Petitioner seeks to exclude from the unit the remaining four individuals, Neudeck, Pearson, Moyer and Blevin, asserting that they do not share a community of interest with the employees in the petitioned-for

[3] At the hearing, the parties also stipulated that the following named individuals should be excluded from the appropriate bargaining unit, as they are employed by a different company, Wayne Gravel, Inc. These individuals include: Wayne Stephen, president; and employees Nick Prozellar, Grey Smith, Tom Wooman and Jesse Bliven, Jr.

unit. The Employer contends, initially, that all seven individuals should be excluded from the unit as they are casual employees. Alternatively, and consistent with its position that the appropriate unit should include all employees at its four plants, the Employer asserts that if the three individuals that the Petitioner seeks to include are included in the unit, then the remaining four individuals should also be included in the unit as they share a community of interest with the other employees in the petitioned-for unit.

Based on the evidence adduced during the hearing and the relevant case law, I conclude that a single-plant unit consisting of the Springville, New York plant is an appropriate unit for purposes of collective-bargaining. I also conclude that Mike Onisko and Brad Chaffee should be excluded from the unit found appropriate herein, as the Petitioner has met its burden of establishing that these two individuals are supervisors as defined in Section 2(11) of the Act. Alternatively, I conclude that Chaffee and Onisko do not share a community of interest with the employees in the petitioned-for unit. Finally, I conclude that the unit should include drivers Thomas Ring, Robin Pirdy and Jerrod Kester, as they are regular part-time employees who share a community of interest with the employees in the unit. However, I conclude that Terry Neudeck, Eric Pearson, Jeff Moyer and Jesse Blevin, should be excluded from the unit found appropriate herein, because Neudeck is employed at a plant other than the Springville, New York plant and he does not share a community of interest with the employees in the petitioned-for bargaining unit, and Pearson, Moyer and Blevin are not employed by the Employer, but rather by Wayne Gravel, Inc.

FACTS

Overview of Operations, Facilities and Geographic Separation

The Employer is engaged in producing and delivering ready mix concrete. The Employer operates four plants. Three of the plants are located in the State of Pennsylvania in Shinglehouse, Coudersport and Bradford. The Employer's fourth plant, which opened in 2005, is located in

Springville, New York.[4] The record establishes that there is no history of bargaining at any of the Employer's facilities.

Lisa Stephen, the Employer's president, testified that the driving times between the Springville plant and the remaining three plants vary from 45 minutes to 105 minutes. The record establishes that the Employer's Springville plant is 75 minutes driving time from the Shinglehouse plant, 60 minutes from the Bradford plant, and 105 minutes from the Coudersport plant.

Stephen also testified that, for the most part, the Employer's concrete operation is seasonal, which requires the plants to close at the end of November and re-open in early April each year. Stephen testified that although there is some limited work performed during winter months, it usually depends on the weather and customer orders.

The record establishes that each of the Employer's four plants produces its own concrete. Products involved in making ready mix concrete include cement, sand, aggregates, chemicals and water. Each plant has bins that store the sand and aggregates, and silos that store the cement. Each plant has its own system that injects water and chemicals into the batch of cement, sand and aggregates, which are mixed together at the plant. Each plant also has a control room that houses a computer system that controls the overall plant operation, including the concrete batching process. Stephen testified that each plant has a laboratory testing area and a separate office for a State (New York or Pennsylvania) Department of Transportation official, who is responsible for testing the concrete used on State projects. Finally, each plant also has its own mixing trucks, which are used to deliver concrete to customers. Shinglehouse has 10 mixing trucks, Coudersport and Bradford each have 3 mixing trucks, and the Springville plant has 7 mixing trucks.

[4] At the hearing, the Employer submitted, as exhibits, employees' timecard history lists which refer to the Shinglehouse plant as "Ceres," and the Springville plant as "Ashford." In order to maintain uniformity, only Shinglehouse and Springville will be used to identify these two plants.

Central Control over Labor Relations

The Employer's headquarters are located across the street from the Shinglehouse plant. Stephen, who is based out of Shinglehouse, testified that the Employer's hiring process is the same for all plants. Job applicants are usually provided applications by plant coordinators, who conduct an initial screening interview to see if the applicant is qualified. Coordinators then forward completed applications to Stephen who will usually conduct final interviews at the Employer's headquarters.

The Employer's human resources department is also located in Shinglehouse, where all personnel files, employee timecards and invoices for work performed by other companies are stored. Stephen also testified that the Employer's personnel policies are the same for employees at all plants. Finally, Stephen testified that she is responsible for final decisions involving the hiring, transferring and disciplining of employees employed by the Employer.

Employee Skills, Functions and Working Conditions of Employment

The record reveals that all plants employ employees in the same job classifications, including coordinators and drivers. The record also reveals that two plants, Shinglehouse and Bradford, also employ laborers.[5] Stephen testified that all drivers receive the same training and must have a commercial driver's license ("CDL") to drive for the Employer. While drivers generally share the same skills, the record reveals that in some instances, greater skills are required for certain types of work. For example, only a limited number of drivers are skilled enough to drive conveyors and front loaders. Also, the record reveals that one driver, Dennis Cobo, performs 40 percent of the major mechanical work on the trucks for all plants, such as repairing engines and transmissions. Stephen testified that the remaining 60 percent of all mechanical work for the four

[5] The record establishes that in 2006, the Shinglehouse plant employed a coordinator, six drivers and two laborers; Coudersport employed a coordinator and two drivers; Bradford employed a coordinator, two drivers and a laborer; and Springville employed two coordinators and nine drivers (the status of three of whom are in dispute).

plants is generally outsourced to a different company, Wayne Gravel, Inc. The record further reveals that all drivers share the same job duties, which include delivering concrete to customers, sweeping and cleaning the plant, making 2' x 2' x 6' concrete blocks with the leftover concrete, and performing routine maintenance on their trucks, such as greasing, lubing, checking the brakes, washing the trucks and checking the air in the tires.

Hourly wage rates for drivers range between $11.00 to $15.00 an hour, which is consistent among the four plants. The three laborers earn $8.00, $8.80 and $13.00 an hour, respectively. All full-time employees receive the same benefits, including vacation time, holiday pay, life insurance, health insurance, 401(k) matching from the Employer, personal time, disability insurance and bereavement pay. Part-time employees receive only personal time, disability insurance and 401(k) matching from the Employer. Employees at the four plants share the same hours of work, starting generally around 7:00 a.m. and working until all orders have been filled.

Control over Daily Operations and Supervision

As explained above, each plant employs at least one coordinator. At the Springville plant, there are two coordinators: Mike Onisko and Brad Chaffee.[6] The record reveals that coordinators are the highest ranking employees at each of the four plants.[7] Coordinators, including Onisko and Chaffee, are responsible for overseeing the entire plant operation, including opening the plant an hour before other employees arrive to work, mixing the concrete batch, answering the telephone, taking orders from customers, and coordinating the timely delivery of concrete to customers. Stephen testified that Onisko is her main contact at the Springville plant, and that she communicates with Onisko on a daily basis by telephone. Coordinators are responsible for completing paperwork,

[6] There is conflicting evidence and testimony as to Chaffee's job title. For example, the timecard history list for Chaffee, submitted by the Employer at the hearing, refers to Chaffee as a plant coordinator. Stephen testified that Chaffee is the backup coordinator, responsible for the same job duties as Onisko when Onisko is unavailable. Driver Thomas Ring testified that Chaffee's business card states that he is the Employer's vice-president of operations.

[7] Lisa Stephen, the Employer's president, testified that she visits the Springville plant only once a month.

including reviewing employee timecards, completing employee work schedules, filling out invoices and initialing off on delivery tickets. The coordinators forward this paperwork to Stephen at Shinglehouse. Stephen also testified that Onisko and Chaffee are the only two individuals trained to work in the control room using the Employer's computer system, which controls the overall plant operation. The coordinators are also required to maintain flexibility throughout the workday. For example, if customers change or cancel their orders, it is the coordinators' responsibility to make the appropriate changes in the delivery times or in the amount of concrete to be delivered. Also, when trucks break down on the road, coordinators are responsible for sending backup trucks or getting repairs started.

The record establishes that coordinators are responsible for assigning drivers their work hours, including their start and end times, and the location of their concrete deliveries. At the Springville plant, these responsibilities generally fall on Onisko or to Chaffee, in Onisko's absence.[8] Stephen testified that employee start times should be varied by 15 minutes, because the plants can only fill one truck at a time. However, the record establishes that coordinators are responsible for deciding which employee starts at a particular time and drives to a specific location to deliver their concrete load. When scheduling employees' work time throughout the day, coordinators must take into account the distance the truck must travel to deliver its load, the amount of concrete being delivered, and the next delivery location. Stephen testified that trucks are also assigned to drivers by coordinators. Driver Thomas Ring testified that Chaffee assigned him his truck that he drives on a daily basis. Stephen also testified that coordinators determine when employees can go home. For instance, although there may be no more deliveries on a given day, there may be a safety issue with one of the trucks. Stephen testified that in these cases, coordinators are responsible for deciding

[8] The record establishes that Chaffee recently served as the Springville plant coordinator for two weeks when Onisko was absent.

whether the safety issue is urgent, and if so, the coordinators have the authority to ask employees to stay and repair the truck.

Coordinators also have the authority to approve overtime. Stephen testified that at the beginning of each day, she sends coordinators, including Onisko, an updated printout, listing the total hours worked by each employee for that week. Stephen testified that there is no overtime policy and she leaves the decision up to her coordinators, including Onisko, to decide which driver gets the overtime work. Stephen also testified that Onisko has a standing order to approve time-off requests as long as it does not interfere with the work schedules. In this regard, the record reveals that Onisko recently granted time off to an employee on a number of occasions. However, Stephen testified that she told Onisko to stop granting the employee time off, as she had observed a pattern of time off starting everyday at 3:15 p.m., which was unfair to other employees who had to work past 3:15 p.m.

The record also establishes that when drivers are at the plants waiting for their next delivery time, coordinators, including Onisko and Chaffee at the Springville plant, direct employees to perform certain tasks, including performing routine maintenance on their trucks, filling bins with sand and aggregates, making concrete blocks and sweeping and cleaning the plant. However, there is no record evidence indicating whether coordinators, including Onisko and Chaffee, are held accountable for the work of the employees performing these tasks.

As stated above, coordinators, including Onisko and Chaffee, play a role in the hiring process. For example, coordinators provide job applicants with application forms and they conduct initial screening interviews to determine if applicants are qualified. Coordinators collect completed applications and forward them to Lisa Stephen. Stephen testified that Onisko is also available to answer questions from applicants. There is record evidence that Chaffee exclusively interviewed driver Thomas Ring and effectively recommended to Lisa Stephen that Ring be hired. Stephen

acknowledged at the hearing that she did not interview Ring and that she relied on Chaffee's judgment.

Stephen also testified that Onisko and Chaffee bring to her attention instances of lack of employee cooperation. In these instances, Stephen testified that she would direct Onisko and Chaffee as to how the problem should be handled. There is no record evidence that Onisko or Chaffee have formally disciplined employees. However, on one occasion, Chaffee verbally admonished driver Thomas Ring for incorrectly filling out his timecard.

Stephen also testified that Onisko and Chaffee are both guaranteed 40 hours of work a week, and they are not entitled to claim overtime. Other employees at the Springville plant are not guaranteed 40 hours of work a week, but they are entitled to claim overtime. The record also reveals that Onisko earns $21.62 an hour and Chaffee earns $26.00 an hour. Stephen testified that Onisko and Chaffee enjoy the same benefits as other full-time employees. Onisko and Chaffee each have a company credit card in their name and they drive a company car to and from work every day. No other employee at the Springville plant enjoys these benefits.

Stephen also testified that Chaffee reports to the Shinglehouse plant every day, before going to work at the Springville plant. However, a review of the timecard history for Chaffee reveals that in 2006, Chaffee worked at the Springville plant only a total of 322 hours.

The record establishes that when Onisko or Chaffee are not performing coordinator duties, they drive and deliver concrete, make concrete blocks, clean the garage, sweep the floors, take out the garbage and spray down the parking lot.

Employee Interchange and Contact

The record reveals that there have only been three permanent transfers from one plant to another, excluding the transfer of coordinator Chaffee from the Shinglehouse plant to the Springville plant when it opened in 2005. Stephen testified that Terry Neudeck permanently

transferred from Springville to Shinglehouse, Bob Williams transferred from Shinglehouse to Bradford, and Robert Wandover transferred from Coudersport to Bradford.

Stephen testified that temporary employee transfers from one plant to another occur on a regular basis, when additional employees are needed at a plant to complete a large customer order. In October 2006, eight employees were temporarily transferred from the other three plants to the Springville plant to work several days on a project involving a large concrete pour located in Arcade, New York. These eight temporarily transferred employees worked a total of approximately 156.50 hours on the Arcade job.

A review of the timecard history reports submitted by the Employer at the hearing for all employees, reveals that Springville employees, exclusive of temporary transfers, worked 21,148 total hours in 2005-2006. In 2005, 6 drivers and laborers from the Shinglehouse, Coudersport and Bradford plants worked a total of approximately 437 hours at the Springville plant. In 2006, 9 drivers and laborers from the Pennsylvania plants worked a total of approximately 601 hours at the Springville plant, including the 156.50 hours worked on the Arcade project. A review of the timecard history reports for Springville employees reveals that in 2005, they worked a total of approximately 439 hours at the other three plants, and in 2006, they worked approximately 525 hours at the other three plants.

There is no record evidence explaining the context for the temporary transfers other than for the Arcade project. For example, there is no record evidence detailing the number of total deliveries involved in such transfers or how or why it is determined that a temporary transfer is required. Stephen testified that drivers, including those temporarily transferred between plants, spend most of their time delivering concrete to customers and not interacting with each other at the plants. Finally, the record establishes that when employees work at other plants, the Employer allocates the cost of their work, i.e., their hourly pay rates, back to their home plant.

Thomas Ring, Robin Pirdy and Jerrod Kester

The record establishes that these three part-time employees are employed by the Employer and are based at the Springville plant. Thomas Ring has been employed by the Employer since July 31, 2006. Ring is a driver and he earns $14.00 an hour. Ring testified that he reports to Onisko, and that Onisko reports to Chaffee. Ring testified that he has a CDL and he performs the same driving functions as other drivers included in the bargaining unit. A review of Ring's timecard history reveals that in the 10 weeks since his hire, he has worked approximately 510 hours in 54 days of work, averaging 5.4 days and 51 hours per week.

Robin Pirdy has been employed by the Employer since July 15, 2005, and, according to Stephen, was originally hired as a full-time driver. The record reveals that Pirdy owns his own hauling business. Pirdy currently earns $14.00 an hour. Pirdy's timecard history reveals that he worked at least one day a week, in all but three weeks starting April 17, 2006. During the 25 weeks he has worked, Pirdy worked approximately 70 days, averaging 2.8 days of work a week. Pirdy worked approximately 638 hours in the Springville plant in 2006, while he worked approximately 887 hours in Springville in 2005. The record establishes that Pirdy has a CDL and performs the same job duties as other full-time drivers. The record further reveals that in 2006, Pirdy received holiday pay for Memorial Day and the Fourth of July. Cathy Derx, the Employer's human resources coordinator, testified that only full-time employees receive holiday pay.

Jerrod Kester began working for the Employer at the Springville plant on June 15, 2006. The record establishes that Kester is a driver and he earns $14.00 an hour. Kester's time sheets reveal that since his hire date, Kester has worked at least one day in 14 out of 17 weeks. During this time, Kester worked 33 days, averaging 2 days of work a week. The record further reveals that during these 33 days, he has worked a total of 262 hours, averaging approximately 8 hours a day and 16 hours a week. Derx testified that Kester has a full-time job with another company.

Terry Neudeck

Terry Neudeck is employed by the Employer as a full-time driver, earning $13.50 an hour. The record establishes that in 2005, Neudeck was permanently transferred from the Springville plant to the Shinglehouse plant. Neudeck's timecard history reveals that Neudeck worked 18 days at the Springville plant in 2006, for a total of approximately 150 hours. Neudeck worked 5 of these 18 days in October 2006, for the large concrete pour at the Arcade project. During these five days in October 2006, Neudeck worked approximately 39 hours. These hours constitute 26 percent of his total work time at the Springville plant in 2006. To date in 2006, Neudeck always has begun his workday in Pennsylvania. He is supervised by Rich Cole, coordinator at the Shinglehouse plant.

Eric Pearson, Jeff Moyer and Jessie Blevin

The record establishes that Eric Pearson, Jeff Moyer and Jessie Blevin are not employed by the Employer. Eric Pearson testified that he is a full-time employee for Wayne Gravel, Inc. Pearson testified that in 2006 he worked at the Springville plant on two occasions. However, the record does not reveal how many hours he worked at the Springville plant in 2006. Pearson also testified that he was a "rental" employee to the Employer from Wayne Gravel, Inc. He was paid by Wayne Gravel, Inc. for the work he performed at the Springville plant. Pearson further testified that when he worked at the Springville plant, he reported directly to the plant coordinator who assigned him his daily tasks and told him where to drive and which truck to use.

Jeff Moyer testified that he is a full-time employee for Wayne Gravel, Inc. Moyer testified that he worked approximately 20 times at the Springville plant in 2006. However, Moyer testified that he did not deliver concrete to any customers during this time. Instead, Moyer testified that he was primarily responsible for moving equipment in and out of the Springville plant. Moyer testified that he also hauled aggregates to the Springville plant. When working at the plant, while, for example, moving concrete blocks, Moyer testified that he reported directly to the plant coordinators,

who told him what to do and where to go. Similar to Pearson, Moyer characterized his work for the Employer as a "rental" from Wayne Gravel. Moyer was paid by Wayne Gravel for his work at Springville and he was paid at his regular rate of pay for that work.

Finally, Jessie Blevin testified that he is a full-time employee of Wayne Gravel, Inc. Blevin testified that in 2006, he worked at the Springville plant on one occasion. During that single instance, Blevin testified that he was told by Wayne Stephen, the president of Wayne Gravel, to report to Springville. Blevin clocked in for work at Wayne Gravel's facility, traveled to Springville and used one of Springville's trucks to deliver concrete. Blevin testified that his work direction came directly from the Springville plant coordinator. Similar to Pearson and Moyer, Blevin testified that he was rented to the Employer from Wayne Gravel.

ANALYSIS

Unit Scope

The Board has consistently held that a single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity. Trane, 339 NLRB 866 (2003); Cargill, Inc., 336 NLRB 1114 (2001); New Britain Transportation Co., 330 NLRB 397 (1999); Centurion Auto Transport, 329 NLRB 394 (1999). To determine whether the presumption has been rebutted, the Board examines such factors as the extent of centralized control over labor relations and daily operations, whether local management possesses substantial autonomy, the extent of employee interchange, the similarity of employee skills and functions, the geographic distance between plants and the presence or absence of a bargaining history. Trane, supra; New Britain Transportation Co., supra; Esco Corp., 298 NLRB 837 (1990). The party opposing the single-facility presumption has the burden of presenting sufficient evidence to rebut the presumption. J&L Plate, 310 NLRB 429

(1993). In the instant case, I conclude that the evidence fails to rebut the presumption of the appropriateness of the petitioned-for single-facility unit.

It is clear from the evidence that there is centralized control over labor relations. For example, the hiring process is the same for all plants and the Employer's personnel policies apply to all employees company-wide. Employee timecards, personnel files, invoices and other administrative items are housed in the administrative headquarters located in Shinglehouse, Pennsylvania. Employees' skills, job functions and working conditions are also similar.[9] For example, hourly rates for drivers are consistent among the four plants. Also, all drivers are required to possess a CDL to drive for the Employer. When employees are not driving, they perform much of the same job duties as the drivers at the other plants, such as sweeping and cleaning the plant, filling bins with sand and aggregates, making concrete blocks and either moving them or stacking them according to the directions given by their coordinators.

However, these factors are outweighed by each of the plants having substantial local autonomy. The coordinators at each plant have significant control over daily operations, there is limited employee interchange between plants, and there is significant geographical distance between the four plants. There is no history of collective bargaining at any of the plants.

More specifically, the evidence establishes that each plant produces and stores its own concrete. Each plant has its own mixing trucks that deliver the concrete to its customers. There is no evidence that the Springville plant is dependent on or so functionally integrated with the other three plants that it cannot operate on its own. See Southern California Water Company, 228 NLRB 1296, 1297 (1977) (finding that "operations are not so functionally integrated that a cessation of work in one [location] would cause a systemwide shutdown of operations."). Here, the daily

[9] I do note, however, that, unlike the Bradford and Shinglehouse plants, the Springville and Coudersport plants do not have a laborer job classification.

operations, including the batching process and the laboratory for testing is performed at each plant and run independently from the other plants.

The evidence also establishes that each plant's coordinators are responsible for the daily operations of each plant. The evidence establishes that Stephen visits the Springville plant only once a month. The evidence shows that she relies heavily on coordinators as they are her direct liaisons with whom she communicates daily. Coordinators are responsible for mixing the batch of concrete, controlling the computer system and coordinating daily deliveries. Coordinators assign the start and end times of each driver, assign drivers' their location of deliveries, and approve overtime and time-off.

The Employer, in its post-hearing brief, relies on the timecard history to support its position that there is significant employee interchange between plants. The Board has explained that proffered incidents of interchange are of little evidentiary value unless given some meaningful context, such as detailing the percentage of total routes involved in such interchanges. See New Britain Transportation Co., 330 NLRB 397, 398 (1999). The evidence establishes that there have only been three permanent transfers from one plant to another. Concerning temporary transfers, a review of the timecard history for all employees reveals that the employees from the Pennsylvania plants worked at the Springville plant a total of 437 hours in 2005 and 601 hours in 2006.[10] However, the Employer failed to establish any meaningful comparative context in which these temporary transfers occurred. There is no evidence detailing the number of total deliveries performed by temporary transfers on any given day or during either 2005 or 2006. The record establishes that temporarily transferred drivers spend most of their work time delivering concrete to customers and not interacting with each other at the plants. Moreover, these transfers appear to

[10] These hours include 120 hours worked by one laborer who temporarily worked at the Springville plant in 2006, which employs no laborers of its own.

have resulted in a small percentage of total work hours being performed by transferees compared to that usually found significant in a multi-facility analysis. In 2005 and 2006, the nine petitioned-for employees at the Springville plant worked a total of 21,148 hours, including overtime.[11] Thus, transferees performed only 4.7 percent of the total hours worked at the Springville facility in 2005 and 2006. Also, the record establishes that the Springville drivers worked 439 hours in 2005 and 525 hours in 2006 at the 3 Pennsylvania plants. This represents only 2.9 percent of the total work performed by the employees at the 3 Pennsylvania plants in 2005, and 2.6 percent of the total work hours at these plants in 2006. Thus, this evidence of interchange does not establish that the Springville plant relies on the work force of other plants or is relied on by other plants to operate an integrated enterprise. See New Britain Transportation Co., supra (finding that 200 instances of temporary interchange do not approach the degree of significant interchange where the employer employs over 190 employees). Compare Purolator Courier Corp., 265 NLRB 659, 661 (1982) (finding that the interchange factor was met where 50 percent of the work force came within the jurisdiction of other facilities on a daily basis); Dayton Transport Corp., 270 NLRB 1114, 1115 (1984) (finding that the presumption was rebutted where there were approximately 400-425 temporary employee interchanges between facilities in one year among a workforce of 87).

The distance between the plants also militates against a multi-plant unit. The shortest driving time between Springville and another plant is 60 minutes, while the longest driving time is 105 minutes. While geographical separation is not necessarily conclusive, it is a strong factor in determining that a single-plant unit is appropriate. See Van Lear Equipment, Inc., 336 NLRB 1059 (2001); D&L Transportation, 324 NLRB 160 (1997) (finding that a single location bus terminal to be appropriate where the employer's other bus terminals were between 3 and 21 miles apart).

[11] The Springville drivers worked 8,400 hours of straight time in 2005, and 11,047 hours in 2006. The Springville unit drivers worked 1,701 hours of overtime during this two-year period, for a total of 21,148 hours during the two years.

In Esco Corp., 298 NLRB at 840, the Board concluded that the single-facility unit presumption had not been rebutted. In weighing all the relevant factors, the Board found that the lack of regular and substantial interchange or contact between the warehouse employees at one location, and employees at other locations, together with the distances between locations (between 174 miles and 280 miles) outweighed the centralized operations and labor relations, limited local autonomy, and the common skills and functions of the employees at all three locations. Similarly, here, I find the local autonomy exercised by the coordinators, coupled with the lack of evidence of context for the temporary transfers necessary to establish they are regular and substantial, and the distances between the plants, outweigh the factors of centralization of the Employer's operations and labor relations and the common skills and functions of most of the Employer's employees.

Accordingly, upon review of the relevant factors, I conclude that the preponderance of record evidence fails to establish that the Springville plant has lost its separate identity and that the Employer has failed to rebut the presumptive appropriateness of the petitioned-for single facility unit consisting of employees at the Springville plant.

Supervisory Status

The Petitioner contends that coordinators Mike Onisko and Brad Chaffee should be excluded from the bargaining unit because they are supervisors exercising one or more of the supervisory indicia listed in Section 2(11) of the Act. The Employer disagrees and seeks to include these two individuals in the unit found appropriate.

Section 2(11) of the Act defines a "supervisor" as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The statutory indicia outlined in Section 2(11) are listed in the disjunctive, and only one need exist to confer supervisory status on an individual. See, e.g., Phelps Community Medical Center, 295 NLRB 486, 489 (1989); Ohio River Co., 303 NLRB 696, 713 (1991); Opelika Foundry, 281 NLRB 897, 899 (1986). However, mere possession of one of the statutory indicia is not sufficient to confer statutory status unless such power is exercised with independent judgment and not in a routine or clerical manner. See, e.g., J. C. Brock Corp., 314 NLRB 157, 158 (1994).

Section 2(11) of the Act sets forth a three-part test for determining supervisory status. Employees are statutory supervisors if they hold the authority to engage in any of the listed supervisory functions; if their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and their authority is exercised "in the interest of the employer." NLRB v. Kentucky River Community Care, Inc., et al., 121 S.Ct. 1861, 1867, 167 LRRM 2164, 2168 (2001).

The burden of proving supervisory status lies with the party asserting that such status exists. See Kentucky River, supra, 121 S.Ct. at 1866, 167 LRRM at 2167-2168; Oakwood Healthcare, Inc., 348 NLRB No. 37 (September 29, 2006), slip op. at 3. Lack of evidence is construed against the party asserting supervisory status. See Michigan Masonic Home, 332 NLRB 1409, 1409 (2000). "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." Phelps Community Medical Center, supra, at 490. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. See Sears, Roebuck & Co., 304 NLRB 193 (1991). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. Dean & Deluca New York, Inc., 338 NLRB 1046, 1047; Bethany Medical Center, 328 NLRB 1094, 1103 (1999).

There is no contention by any party that these two individuals have the authority to transfer, suspend, lay off, recall, promote, discharge, reward, or to adjust employee grievances, and they do not effectively recommend such actions. The Petitioner contends that Onisko and Chaffee have the authority to assign, responsibly direct, discipline and hire employees or to effectively recommend such actions.

In Oakwood Healthcare, Inc., 348 NLRB No. 37 (September 29, 2006), the Board examined whether charge nurses at a hospital were statutory supervisors based on the charge nurses' role in assigning nursing personnel to patients and directing the nursing staff in the performance of their duties. The Board majority found that Oakwood's permanent charge nurses were Section 2(11) supervisors because they had the authority to "assign" work and exercised independent judgment in making these assignments in the interests of their employer. 348 NLRB slip op. at 9-10, 13. The Board also found that the hospital had failed to carry its burden of proving that the charge nurses responsibly directed employees within the meaning of Section 2(11) of the Act. Id., slip op. at 10. In making these findings, the Board's majority refined the analysis to be applied in assessing supervisory status and adopted the following definitions for the terms "assign," "responsibly to direct," and "independent judgment" as those terms are used in Section 2(11) of the Act.

The Board held that the authority to "assign" refers to "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." Id., slip op. at 4. The Board concluded that to "assign" for purposes of Section 2(11) refers to the "designation of significant overall duties to an employee, not to the . . . ad hoc instruction that the employee perform a discrete task." Id.

The Board also held that the authority "responsibly to direct" is "not limited to department heads," but instead arises "[i]f a person on the shop floor has 'men under him,' and if that person

decides 'what job shall be undertaken next or who shall do it,' . . . provided that the direction is both 'responsible' . . . and carried out with independent judgment." Id., slip op. at 6. The Board held that "for direction to be 'responsible,' the person performing the oversight must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed are not performed properly." Id., slip op. at 7. "Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps." Id.

Finally, the Board held that "to exercise 'independent judgment,' an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." Id., slip op. at 8. "[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." Id. "On the other hand, the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices." Id. Explaining the definition of independent judgment in relation to the authority to assign, the Board stated that "[t]he authority to effect an assignment . . . must be independent, it must involve a judgment, and the judgment must involve a degree of discretion that rises above the 'routine or clerical.'" Id.

Assign

I conclude that the preponderance of the evidence supports a finding that Onisko and Chaffee have the authority to make work assignments in accordance with the Board's definition described above and thus, they exercise supervisory authority under Section 2(11) of the Act. In

this regard, I find that Onisko and Chaffee assign drivers their work hours, the specific trucks to be driven and the location of their concrete deliveries. Also, Onisko and Chaffee assign drivers the responsibilities to deliver their concrete loads to customers which meets the definition of giving significant overall duties to drivers. The evidence also establishes that Onisko and Chaffee have the authority to authorize overtime and to grant time-off.

Onisko and Chaffee use independent judgment in making these assignments. More specifically, the record establishes that Onisko and Chaffee draft the work schedules and make other assignments free from the control of others. While assigning drivers their delivery locations, Onisko and Chaffee must take into account the distances trucks must travel, the equipment to be used, the skill of the drivers involved, the amount of concrete being delivered, and the next delivery location. I find that this independent judgment is not routine or clerical. See Oakwood Healthcare, Inc., supra, slip op. at 8, 9 (discerning and comparing data establishes independent judgment beyond the routine or clerical level). For these reasons, I conclude that Onisko and Chaffee have the authority to assign work to employees within the meaning of Section 2(11) of the Act.

Responsibly to Direct

I conclude that the preponderance of the evidence does not support a finding that Onisko and Chaffee have the authority to responsibly direct drivers in accordance with the Board's definition described above. While the record is clear that Onisko and Chaffee have the authority to decide what job tasks shall be undertaken next and who shall perform the work, there is no record evidence establishing that Onisko and Chaffee will be held accountable for the failures of drivers while performing these assigned duties.

The Board has long recognized that purely conclusory evidence is not sufficient to establish supervisory status. Instead, the Board requires evidence that the employee actually possesses the Section 2(11) authority at issue. See, e.g., Volair Contractors, Inc., 341 NLRB 673, 675 (2004);

Sears, Roebuck & Co., 304 NLRB 193, 194 (1991). Consistent with this requirement, in determining whether accountability has been established, the Board requires evidence of demonstrable accountability. Under Oakwood Healthcare, to be held accountable means that there is a prospect of consequences to the alleged supervisor if the work is inadequately performed. In the instant case, there is no evidence that Onisko and Chaffee have a prospect of consequences if drivers fail to perform their assigned tasks. For this reason, I conclude that Onisko and Chaffee do not have the authority to responsibly direct employees within the meaning of Section 2(11) of the Act.

Discipline

I conclude that there is no evidence that Onisko and Chaffee have the authority to discipline employees or effectively recommend such action within the meaning of Section 2(11) of the Act. There is no record evidence that Onisko and Chaffee have actually disciplined employees. The Petitioner, in its post-hearing brief, relies on one instance when Chaffee verbally reprimanded a driver for improperly filling out his timecards. At the hearing, Ring testified that he did not consider Chaffee's admonition regarding his timecards to be a form of any discipline. The mere issuance of this kind of verbal reprimand is too minor a disciplinary function to constitute statutory authority. See Ohio Masonic Home, 295 NLRB 390, 394 (1984); The Western Union Telegraph Co., 242 NLRB 825, 826 (1979). In addition, there is no record evidence that Chaffee reported the oral reprimand to management or that the reprimand affected job status or tenure. Thus, I conclude that the Petitioner failed to meet its burden of establishing that Onisko and Chaffee have the authority to discipline or effectively recommend such action in accordance with Section 2(11) of the Act.

Hire

I conclude that the preponderance of the evidence supports a finding that Chaffee has the authority to effectively recommend a person for hire within the meaning of Section 2(11) of the Act. However, I further conclude that there is insufficient evidence to find that Onisko has the authority to hire or effectively recommend such action. The record establishes that both Onisko and Chaffee play a role in the hiring process. Onisko and Chaffee provide job applicants with application forms and they conduct initial screening interviews to determine if applicants are qualified. They collect completed applications and forward them to the Employer's headquarters.

The record further establishes that Chaffee exclusively interviewed applicant Thomas Ring and, according to Lisa Stephen, the Employer's president, effectively recommended the hiring of Ring. Stephen testified that she relied on Chaffee's judgment when approving Ring's hire. However, the Petitioner failed to meet its burden of establishing that Onisko has the same authority as Chaffee to effectively recommend hire, as there is no evidence that Onisko has the authority to, or has effectively recommended the hiring of, employees.

In summary, I conclude that Chaffee is a supervisor within the meaning of Section 2(11) of the Act, based on his authority to assign work and to effectively recommend the hire of employees. I also conclude that Onisko is a supervisor within the meaning of Section 2(11) of the Act, based on his authority to assign work. According, I shall exclude Chaffee and Onisko from the bargaining unit found appropriate herein.[12]

[12] Consistent with this determination, I conclude that Onisko and Chaffee do not share a community of interest with employees in the petitioned-for unit. Onisko and Chaffee do not have the same wage rate, hours or working conditions as the employees in the petitioned-for unit; and their qualifications, skills and training are significantly greater than the employees in the petitioned-for unit. See Overnite Transportation Co., 331 NLRB 662 (2000).

Unit Composition

The status of seven individuals, Thomas Ring, Robin Pirdy, Jerrod Kester, Terry Neudeck, Eric Pearson, Jeff Moyer and Jesse Blevin, are in dispute and a question exists as to whether they should be included in the petitioned-for unit.

Resolution of unit composition issues begin with an examination of the petitioned-for unit. If it is appropriate, the inquiry ends. See Bartlett Collins Co., 334 NLRB 484 (2001). In determining the threshold issue of appropriateness, the Board is guided by the principle that it need endorse only an appropriate unit, not the most appropriate unit. Id. See also Overnite Transportation Co., 322 NLRB 723 (1996). A union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963); Bamberger's Paramus, etc., 151 NLRB 748, 751 (1965); Purity Food Stores, Inc., 160 NLRB 651 (1966). Moreover, it is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. Capital Bakers, Inc., 168 NLRB 904, 905 (1967).

In determining the appropriateness of a petitioned-for unit, the issue is whether the employees share a community of interest. NLRB v. Action Automotive, Inc., 469 U.S. 490, 494 (1985). Community of interest factors include, but are not limited to, mutuality of wages, hours and working conditions; commonality of supervision; similarity in qualifications, training, skills and job functions; frequency of contact and interchange; and functional integration. See Ore-Ida Foods, 313 NLRB 1016 (1994); Kalamazoo Paper Box Corporation, 136 NLRB 134, 137 (1962). While a union's interest in representing a particular unit is relevant, it is not dispositive. See E. H. Koester Bakery Co. Inc., 136 NLRB 1006 (1962). If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties, but it also has the discretion to select an

appropriate unit that is different from the alternative proposals of the parties. See Overnite Transportation Co., 331 NLRB 662 (2000); Bartlett Collins Co., supra.

Upon review of the record, for the reasons cited below, I conclude that the bargaining unit should include drivers Thomas Ring, Robin Pirdy and Jerrod Kester, as they share a community of interest with the employees in the petitioned-for unit. However, I conclude that Terry Neudeck, Eric Pearson, Jeff Moyer and Jesse Blevin, should be excluded from the unit found appropriate herein, because Neudeck does not share a community of interest with the petitioned-for unit, and because Pearson, Moyer and Blevin are not employed by the Employer, but instead are employed by Wayne Gravel, Inc.

Thomas Ring, Robin Pirdy and Jerrod Kester

The record establishes that part-time employees Ring, Pirdy and Kester share a community of interest with the other drivers included in the petitioned-for unit. For example, all three employees are based out of the Springville plant, and share common wages, hours and working conditions and report to the same supervisors, Onisko and Chaffee, as do the other drivers at Springville. Ring, Pirdy and Kester have the same driving skills and possess a CDL as the other drivers.

The Employer asserts that Ring should be excluded from the bargaining unit as he determines his own availability and he has another job. However, besides these conclusionary statements, there is no evidence that Ring turns down work for the Employer or works a second job. Even assuming that the record established that Ring had a full-time job elsewhere or turned down work with the Employer, the Board, in Leaders-Nameoki, Inc., 237 NLRB 1269 (1978), included part-time employees in a unit despite the fact that the part-time employees had full-time jobs elsewhere and were free to reject work when offered. See also Mercy Distribution Carriers, 312 NLRB 840 (1993).

The Employer contends that Ring, Pirdy and Kester are casual employees and should be excluded from the unit on that basis. Part-time employees are included in a unit with full-time employees whenever the part-time employees perform work within the unit on a regular basis for a sufficient period of time during each week or other appropriate calendar period to demonstrate that they have a substantial and continuing interest in the wages, hours, and working conditions of the full-time employees in the unit. New York Display & Die Cutting Corp., 341 NLRB 930 (2004); Arlington Masonry Supply, Inc., 339 NLRB 817 (2003); Pat's Blue Ribbons, 286 NLRB 918 (1987).

In Arlington Masonry Supply, Inc., supra at 819, the Board described its policy for determining part-time eligibility:

> The test to determine whether one is a regular part-time employee versus a casual employee "takes into consideration such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions." Muncie Newspapers, Inc., 246 NLRB 1088, 1089 (1979). "In short, the individual's relationship to the job must be examined to determine whether the employee performs unit work with sufficient regularity to demonstrate a community of interest with remaining employees in the bargaining unit." Pat's Blue Ribbons, 286 NLRB 918 (1987).

The standard frequently used by the Board to determine the regularity of part-time employment is to examine whether the employee worked an average of 4 or more hours a week in the calendar quarter preceding the eligibility date. See Davison-Paxon Co., 185 NLRB 21 (1970). Employees, including truckdrivers, who regularly averaged 4 hours a week for the last quarter prior to the eligibility date were regarded as having a sufficient community of interest to warrant inclusion. V.I.P. Movers, 232 NLRB 14 (1977); Allied Stores of Ohio, 175 NLRB 966 (1969).

A review of Ring's timecards reveals that he is more than a casual employee. For example, in the 10 weeks since his hire, he has worked approximately 510 hours in 54 days of work, averaging 5.4 days and 51 hours a week. The record reveals that Pirdy was hired as a full-time driver in 2005, and, in 2006, he received holiday pay that only full-time employees receive. In

2006, Pirdy worked 638 hours and worked an average of 2.8 days a week. Kester was hired on June 15, 2006, and has worked an average of 2 days a week, for a total of 16 hours a week. The evidence thus demonstrates that Ring, Pirdy and Kester average at least 4 hours a week for the last calendar quarter preceding the eligibility date.[13] See V.I.P. Movers, supra.

Based on the above, I conclude that Ring, Pirdy and Kester are regular part-time employees, and that they should be included in the unit found appropriate herein.

Terry Neudeck

The record establishes that Neudeck does not share a sufficient community of interest with the employees in the petitioned-for bargaining unit. Neudeck is based out of the Shinglehouse, Pennsylvania plant and in 2006, to date, he has always begun his workday in Pennsylvania. The record reveals that Neudeck's immediate supervisor is the coordinator at the Shinglehouse plant, unlike the employees in the petitioned-for unit, who are supervised by the coordinator at the Springville plant. Although Neudeck shares some community of interest factors, such as common wages, hours, working conditions, skills and training, Neudeck does not have substantial employee contact or interchange with bargaining unit drivers, sufficient to warrant his inclusion in the appropriate bargaining unit found herein. For example, in 2006, he worked only 18 days at the Springville plant totaling 150 hours. Neudeck spent 39 of these hours or 26 percent of his total work time in Springville in 2006, working on a single large project in Arcade in October.

Based on the above, I conclude that Neudeck should be excluded from the bargaining unit as he does not share a sufficient community of interest with the employees in the petitioned-for bargaining unit.

[13] The Employer, in its post-hearing brief, for the first time, asserts that Kester is currently deployed in Iraq for the next 18 months. However, I note that there is no record testimony addressing this issue.

Eric Pearson, Jeff Moyer and Jessie Blevin

The record establishes that Pearson, Moyer and Blevin are not employed by the Employer, but rather are employed by Wayne Gravel, Inc. The record further establishes that their work for the Employer was treated as a "rental" from Wayne Gravel, Inc. The three employees continued to receive paychecks from Wayne Gravel for the work they performed for the Employer. The record is clear that no party is asserting joint employer status. Moreover, there is insufficient evidence that these three individuals share a community of interest with the petitioned-for bargaining unit.

Based on the above, I conclude that Pearson, Moyer and Blevin are not employed by the Employer and that they do not share a community of interest with the petitioned-for bargaining unit.

CONCLUSION

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers employed by the Employer at its Springville, New York plant; excluding the Employer's president, executive vice-president, human resources coordinator, coordinators, office clerical employees, guards, and all professional employees and supervisors as defined in the Act.
>
> There are approximately 9 employees in the bargaining unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election

date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union of Operating Engineers, Local Union No. 17, AFL-CIO**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by **Little Lisa, Inc. d/b/a Wayne Concrete, Inc.** with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Niagara Center Building – Suite 630, 130 S. Elmwood Avenue, Buffalo, New York 14202 on or before **November 24, 2006**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **December 1, 2006**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

DATED at Buffalo, New York this **17th** day of **November, 2006**.

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HELEN E. MARSH Regional Director
National Labor Relations Board, Region 3
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202